IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1825 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHAL C KOTHARI

Versus

REGISTRAR GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 1825 of 2004

MR AMIT M PANCHAL for Petitioner No. 1

MRS VD NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 17/03/2004

ORAL JUDGEMENT

Harshal C. Kothari, petitioner, has filed this petition under Article 226/227 of the Constitution of India with a prayer that this Court may direct the respondent, namely, Gujarat University, to grant admission to the petitioner in the first year Post

Graduate Dental Degree Course - MDS (i.e. Master of Dental Surgeon) in pursuance of the petitioner being at serial No. 4 in the merit list and in pursuance of the interviews for admission to MDS Course held on 8.12.2003. The petition was filed on 10.2.2004. When the matter was placed for hearing this Court on 13.2.2004 had issued notice returnable on 20.2.2004. Pursuant to the said notice Gujarat University filed affidavit dated 26.2.2004. The matter was admitted on 1.3.2004. Considering the urgency of the matter, it was taken up for final disposal. I have heard Mr. Amit Panchal, learned advocate for the petitioner and Mrs. V.D. Nanavati, learned advocate for the respondent University.

2. The facts giving rise to this petition are as under:

2.1 It is submitted by the learned counsel for the petitioner that interviews were held by the University for admission on two seats in the Post Graduate Dental Course - MDS SEBC Seats (Category 1.4). The petitioner was not given admission as candidates at merit Nos. 1 and 2 of the merit list were admitted to the MDS Course. Candidate at sr. No. 3 in the merit list was absent. The petitioner is at serial No. 4 in the merit list.

2.2 It is the case of the petitioner that the petitioner was informed on telephone by candidate on merit No. 2 admitted to the MDS Course that the said candidate is declining admission and in view of candidate No. 3 being absent in the interview on 8.12.2003, the petitioner could apply for admission on the seat that will fall vacant on candidate No. 2 refusing admission to the Course. In view of the same, the petitioner made application to the Dean pointing out that candidate No. 2 is refusing admission and candidate No. 3 was absent in the interview, and hence, the petitioner may be given admission.

2.3 It is the case of the petitioner that candidate at serial No. 2 Dr. Vankawala Shaunak P. gave written application on 17.12.2003 to the Dean requesting cancellation of his admission granted on 8.12.2003 on the SEBC (Socially and Economically Backward Class) seat. On 18.12.2003, the Dean, Government Dental College, Ahmedabad, addressed a letter to the Vice-Chancellor of the respondent University, pointing out the merit order of admissions granted in pursuance of the interviews held on 8.12.2003 by the respondent and that candidate No. 2 had refused admission to the Course, as also annexing the merit list of SEBC candidates and the application made by

the petitioner dated 16.12.2003. It is the case of the petitioner that from 18.12.2003 to 4.2.2004, the petitioner after making application on 16.12.2003 to the Dean for admission to the MDS Course had been contacting one Swatiben Bhatt in Room No. 35 of the respondent University and Diptiben in the student Section of the Government Dental College in Civil Hospital, Ahmedabad, for his admission to the MDS Course. There has been little response and no relief in respect of the request for admission, despite the petitioner being fully eligible and qualified to get admission to the Course.

2.4 In view of the position as indicated above, the present petition has been filed on 10.2.2004 wherein the petitioner has challenged an arbitrary action of the University in infringing the fundamental right of the petitioner to education by not giving the petitioner admission to the Post Graduate Dental Degree Course - MDS (hereinafter referred to as "the Course") despite the petitioner being fully eligible and qualified and having applied in the time limit prescribed by the respondent in the proper form and being in merit to get admission to the Course as being arbitrary, illegal, discriminatory against the principle of natural justice.

2.5 In support of the aforesaid contention, the petitioner has relied on Gujarat University Merit List for MDS Admission for November 2003 and also letter dated 16.12.2003 which has been produced at Annexure-B to the petition. He has also relied on the letter of Shaunak P. Vankawala addressed to the Dean, GDC&H, Ahmedabad, dated 17.12.203 and also letter dated 18.12.2003 addressed by the Dean to the Registrar, Gujarat University, Ahmedabad, in which even the Dean has requested the Registrar to do the needful. A reminder dated 5.1.2004 has also been sent to the Registrar, Gujarat University, Ahmedabad which has been produced at Annexure-E to the petition.

2.6 In response to the aforesaid contentions of the petitioner, Ms. V.D. Nanavati, learned advocate appears on behalf of the University. She has relied on the affidavit of the In-Charge Registrar, Gujarat University, Ahmedabad, dated 26.2.2004. The University has contended before this Court that for the Post Graduate Dental Course there are two seats for SEBC students and merit list was prepared for two seats. One of the selected candidates intimated to the Dean that he did not avail benefit of admission by his letter dated 16.12.2003. However, there is no procedure for reshuffling in the case of vacancy arising in the mid-term. The learned counsel for the University has relied on the judgement of

the Hon'ble Supreme Court in the case of MEDICAL COUNCIL OF INDIA VS. MADHU SINGH AND OTHERS reported in (2002) 7 SCC 258. The learned counsel has also relied on para 22 of the said judgement wherein the Hon'ble Supreme Court has held that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. The Hon'ble Supreme Court in para 23 of the said judgement has observed as under:

"There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the Course.

In conclusion -

(i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education.

(ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the institution concerned, action as

prescribed shall be taken by MCI."

2.7 The learned advocate has relied on the judgement of the Hon'ble Supreme Court in the case of SHARWAN KUMAR VS. DIRECTOR GENERAL OF HEALTH SERVICES reported in (1993) 3 SCC 332. She has also relied on the judgement of the Hon'ble Supreme Court in the case of NEELU ARORA (MS.) AND ANOTHER VS. UNION OF INDIA & OTHERS reported in (2003) 3 SCC 366. The learned counsel for the petitioner has submitted that in the aforesaid judgement of the Hon'ble Supreme Court, the Hon'ble Supreme Court has permitted first round of counselling. The learned advocate has submitted that the Supreme Court has considered the judgement in the case of SHARWAN KUMAR VS. DIRECTOR GENERAL OF HEALTH SERVICES (supra) which provided for first and second rounds of counselling. Third round of counselling not envisaged by the Scheme even if after first two rounds some seats remain vacant in a particular year. Even if some seats are unfilled students cannot be admitted midstream. The Hon'ble Supreme Court has also considered the judgement in the case of MEDICAL COUNCIL OF INDIA VS. MADHU SINGH reported in (2002) 7 SCC 258.

2.8 The learned advocate for the petitioner has also relied on another judgement of the Hon'ble Supreme Court in the case of PARAMJEET GAMBHIR AND ANOTHER VS. STATE OF M.P. AND OTHERS reported in (2003) 4 SCC 276. In a given peculiar facts and circumstances of the case the Hon'ble Supreme Court has directed to consider the case of the appellant for admission in postgraduate course in disciplines in which seats were vacant, taking into consideration their rank and choice. However, the Hon'ble Supreme Court has observed that the decision will not be used as a precedent either for holding third counselling or for granting midterm admission. The said judgement was given in a peculiar facts and circumstances of the case.

3. I have considered the submissions made by the learned counsel for the petitioner. I have also considered the submissions made by the learned counsel for the University. I have also considered the judgements in the case of MEDICAL COUNCIL OF INDIA VS. MADHU SINGH (supra),, NEELU ARORA (MS.) AND ANOTHER VS. UNION OF INDIA & OTHERS (supra), PARAMJEET GAMBHIR AND ANOTHER VS. STATE OF M.P. AND OTHERS (supra) cited by the learned counsel for the parties. In this case interviews were held by the respondent for admission on two seats in the Postgraduate Dental Course on 8.12.2003

and on 16.12.2003 the petitioner was informed about admission can be given for which the petitioner has filed some correspondence. However, from 18.12.2003 to 4.2.2004 the petitioner after making application on 16.12.2003 to the Dean for admission to the MDS Court tried to approach the University but there was no response from the University. Ultimately, the petitioner has filed this petition on 10.2.2004. This Court issued notice on 13.2.2004 and admitted the matter on 1.3.2004. The matter has been taken up for final hearing today.

4. Ms. Nanavati, learned advocate for the University, stated that the petitioner is categorically informed right from 18.12.2003 about refusal of admission. The learned counsel has also relied on the Gujarat University Notice which provided admission to Dental Postgraduate Course first term, November 2003 where the last date of joining term is from 8.12.2003 to 14.12.2003.

5. I have considered the facts of the case. I have also considered the judgements cited by the learned counsel for the parties. This Court has considered the principles laid down by the Hon'ble Supreme Court in the case of MCI Vs. Madhu Singh (supra) particularly paragraph nos. 22 and 23 which I have referred earlier. If this Court passes any order, there will be violation of the principles given in para Nos. 22 and 23 of the said judgement because the admission is started from December 2003 and almost three months have passed and therefore if this Court passes any order as prayed by the petitioner, the same will be contrary to and inconsistent to the said judgement of the Hon'ble Supreme Court.

6. In my view the ratio of the judgement of the Hon'ble Supreme Court in the case of SHARWAN KUMAR VS. DIRECTOR GENERAL OF HEALTH SERVICES (supra) & NEELU ARORA (MS.) AND ANOTHER VS. UNION OF INDIA & OTHERS (supra) cannot come to rescue of the petitioner.

7. Here the last date of admission was 18.12.2003. The petitioner has filed present petition only on 13.2.2004. I am hearing the matter only on 17.3.2004. If I pass any order in favour of the petitioner granting admission, the same will be contrary to and inconsistent with the judgement of the Hon'ble Supreme Court in the case of Madhu Singh (supra). The petitioner has filed the petition after a long lapse of time. Thus, on the ground of delay, laches and acquiescence, the petition is liable to be rejected. The petitioner is therefore not entitled to any relief in this behalf.

8. In view of the same this Court is of the view that the prayer as made by the petitioner cannot be granted. In view of the same, this petition is rejected. Rule is discharged with no order as to costs.

(pkn) (K.M. MEHTA, J)